No. 14-844

In The

Supreme Court of the United States

ANTOINE BRUCE, *Petitioner*,

v.

CHARLES E. SAMUELS, JR., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF THE SOUTHERN POVERTY LAW CENTER, THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND THE HUMAN RIGHTS DEFENSE CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Southern Poverty Law Center ("SPLC") is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. SPLC's lawsuits have toppled institutional racism in the South, bankrupted some of the nation's most violent white supremacist groups, and won justice for exploited workers, abused prison inmates, disabled children, and other victims of discrimination.

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of approximately 10,000, with up to 40,000 affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, *amici* members, or counsel for *amici*, made a monetary contribution to its preparation or submission.

numerous briefs as *amicus curiae* each year, in the United States Supreme Court and other courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

The Human Rights Defense Center ("HRDC") is a non-profit organization founded in 1990 that nationally advocates on behalf of those imprisoned in American detention facilities. The HRDC serves as an important source of news and legal research for prisoners' rights advocates, policy makers, academics, researchers, journalists, attorneys, and others involved in criminal justice-related issues. In support of this effort, HRDC publishes materials including Prison Legal News, a monthly publication with subscribers in all 50 states and internationally that provides a voice to prisoners, their families, and others affected by criminal justice policies.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(b)(1), "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." The prisoner initially is required to pay a partial filing fee, and then required "to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account" until the fee is paid in full. *Id.* at § 1915(b)(2).

This case presents the question of the meaning of the 20-percent-of-monthly-income requirement when a prisoner files more than one lawsuit—a total of 20 percent of the prisoner's very modest monthly income (the "per prisoner" approach); or 20 percent for each lawsuit, which could lead to 40, 60, 80, or 100 percent of the prisoner's monthly income, depending on the number of lawsuits filed (the "per case" approach).

Amici respectfully submit that the "per prisoner" approach best reflects the intent of the PLRA and the careful balance that the statute strikes. The "per prisoner" approach likewise best comports with this country's deep tradition of allowing adequate opportunity for judicial redress, regardless of an individual's financial means or legal status.

ARGUMENT

Both the "per prisoner" approach and the "per case" approach require the prisoner to pay all of his or her filing fees. The issue in this case is the timing and amount of the required partial payments in meeting that obligation.

The "per prisoner" approach, in mandating that the prisoner pay a significant amount (20 percent) of his or her limited monthly income every month until the debt for the filing fees is discharged, requires a substantial ongoing financial contribution from the prisoner. At the same time, it avoids the imposition of an overwhelming burden that easily could inhibit the filing of colorable and meritorious claims.

The "per case" approach, in contrast, in compelling 20 percent of a prisoner's monthly income for *each* case filed by a prisoner (up to 100 percent of a prisoner's total income) would create an insuperable obstacle for incarcerated individuals seeking judicial redress, including individuals with colorable and meritorious claims that would be raised in multiple lawsuits.

Accordingly, *amici* respectfully highlight three points for this Court's consideration. *First*, an important background principle for Congress's adoption of the PLRA's fee-collection provision was this country's longstanding commitment to ensuring a reasonable opportunity for judicial access for all, including incarcerated individuals. *Second*, Congress sought a careful balance in the fee-collection provision, not the imposition of a potentially crushing burden that might block judicial access for legitimate claims. *Third*, the recent history of litigation by prisoners confirms that there are numerous important examples of meritorious prisoner lawsuits—the kinds of suits that might well be deterred or foreclosed if the "per case" approach is adopted.

I. CONGRESS ENACTED THE PLRA AGAINST THE BACKGROUND OF THIS COUNTRY'S TRADITION OF ACCESS TO THE COURTS AND THE OPPORTUNITY FOR JUDICIAL REDRESS

The principle that the opportunity to seek judicial redress should not be precluded based on financial resources is well-settled in American law. Judge Learned Hand's famous "commandment" that

"thou shalt not ration justice" is woven into the American fabric.[2] As long ago as Thomas Jefferson's first Inaugural Address in 1801, the newly inaugurated President emphasized that "[e]qual and exact justice to all men form[s] the bright constellation, which has gone before us."[3] As Judge Jack B. Weinstein has explained, "Accessibility to the courts and other adjudicatory institutions on roughly equal terms is essential to equality before law. Equal access to the judicial process is a sign of a just society."[4]

Federal legislation permitting in forma pauperis litigation reflects this cardinal commitment. More than a century ago, in 1892, Congress enacted the first federal in forma pauperis ("IFP") statute, "intend[ing] to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs." *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948) (internal quotation marks omitted). This Court, moreover, recently reaffirmed that, "[o]rdinarily, a federal litigant who is too poor to pay

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[2] The Honorable Learned Hand, Address at the 75th Anniversary of the Legal Aid Society of New York (Feb. 16, 1951).

[3] Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), http://www.loc.gov/exhibits/treasures/images/vc6796b.jpg.

[4] Jack B. Weinstein, *Adjudicative Justice in a Diverse Mass Society*, 8 J.L. & Pol'y 385, 388-89 (2000).

court fees may proceed in forma pauperis." *Coleman v. Tollefson*, 135 S. Ct. 1759, 1761 (2015).

This protection of the opportunity for judicial redress applies fully to incarcerated individuals. As Chief Justice Roberts explained for a unanimous Court, "Our legal system remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law." *Jones v. Bock*, 549 U.S. 199, 203 (2007). The Court repeatedly has emphasized the importance of ensuring that prisoners have access to judicial redress and that their right to bring claims is not barred by unwarranted obstacles. *See, e.g., Bounds v. Smith*, 430 U.S. 817, 824-25, 828 (1977) (holding that prisoners have the right to access courts to pursue relief for constitutional violations); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) (prisoners' rights of access to courts may not be denied); *Ex Parte Hull*, 312 U.S. 546 (1941) (holding that prisoners have a right of access to the courts free of the interference of unreasonable prison regulations). As the Court has stressed, "[t]here is no iron curtain drawn between the Constitution and the prisons of this country. [Prisoners] retain right of access to the courts." *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974).

Congress enacted the PLRA in 1996 against this background of a deep national commitment to preserving access to the courts for incarcerated individuals.

II. THE FEE-COLLECTION PROVISION OF THE PLRA REFLECTS A CAREFUL BALANCE

Faced with a substantial volume of prisoner lawsuits, Congress revisited the IFP statute with regard to prisoners in the PLRA. As this Court has explained, Congress sought a balanced approach. Congress wished both to curb frivolous litigation and to preserve access for colorable and meritorious claims. The goal was to ensure "that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit." *Jones*, 549 U.S. at 203.

While the PLRA "changed the landscape of prisoner litigation," *Torres v. O'Quinn*, 612 F.3d 237, 241 (4th Cir. 2010), it refined but, importantly, did not eliminate IFP treatment for prisoners. Instead, as noted, with respect to fee collection, the PLRA instituted a general requirement that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The prisoner is required to pay an initial partial filing fee and then "monthly payments of 20 percent of the preceding month's income credited to the prisoner's account" until the fee is paid in full. *Id.* at § 1915(b)(2).[5]

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[5] With respect to the initial filing fee, the statutory provision provides that "[t]he court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of – (A) the average monthly deposits to the prisoner's *(cont'd)*

It is telling that Congress, even in enacting the restrictions of the PLRA, adhered to the well-established tradition of recognizing the fundamental importance of IFP for prisoners in the federal judicial system. It required a significant, but measured, monthly contribution from a prisoner earning an income—not 100 percent, not 50 percent, but 20 percent. On its face, this is an assiduous balance, not an onerous imposition that effectively renders even the prisoner's meager income illusory.[6]

In keeping with this balance, a proper understanding of the fee-collection provision caps the prisoner's monthly obligation at 20 percent of the prisoner's monthly income regardless of the number of cases for which the prisoner owes such fees. Again, it is significant that the prisoner remains obligated to pay all of the filing fees for all of his or her cases; the issue is whether that payment is accelerated by requiring 40 percent, or 60 percent, or 80 percent, or 100 percent, of the prisoner's scant monthly income if he or she files more than one lawsuit. Only a "per prisoner" reading, maintaining the monthly obligation at 20 percent of monthly

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account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." 28 U.S.C. § 1915 (b)(1).

[6] Earnings for federal prisoners range from a starting point of only $0.23 per hour to a maximum of $1.15 per hour. *See* Fed. Bureau of Prisons, Progr. Stmt. 8120.02 – Work Programs for Inmates – FPI § 345.51 at ch. 5, p. 1 (July 15, 1999), http://www.bop.gov/policy/progstat/8120_002.pdf.

income, is consistent with the careful balance struck by Congress.

Particularly against the backdrop of our national commitment to judicial access for all, including prisoners, it is clear that Congress did not intend the PLRA to operate as a roadblock that would deprive IFP prisoners of access to the courts for colorable and meritorious litigation. Instead, the legislative history shows that, even when legislators were eager to end what they viewed as frivolous lawsuits, they did not intend to prevent prisoners from filing potentially legitimate claims. *See, e.g.*, 141 Cong. Rec. S14,627 (daily ed. Sept. 29, 1995) (statement of Sen. Hatch) ("I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised.").

In enacting the PLRA, Congress "placed a series of controls on prisoner suits, constraints designed to prevent sportive filings in federal court." *Skinner v. Switzer*, 562 U.S. 521, 535 (2011). It did not seek a total ban on prisoners' IFP filings. *See, e.g.*, *Jones*, 549 U.S. at 204 (explaining that, through the PLRA, "Congress enacted a variety of reforms designed to filter out the bad claims and facilitate consideration of the good").

With respect to the fee-collection provision in particular, the fee obligations—a requirement to pay the entirety of the fee and an obligation to pay up to one-fifth of the prisoner's monthly income—was meant to deter frivolous litigation, but not to preclude prisoners from proceeding with potentially meritorious claims. *See, e.g.*, 141 Cong. Rec. S7526

(daily ed. May 25, 1995) (statement of Sen. Kyl) ("The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively."); *id.* ("The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings."). Indeed, as one legislator declared, "If [a prisoner] ha[s] a meritorious lawsuit, of course they should be able to file." 141 Cong. Rec. S14,628 (daily ed. Sept. 29, 1995) (statement of Sen. Reid). Such statements are consistent with a "per prisoner" approach, which strikes a balance between allowing a prisoner access to courts and requiring that prisoner to undertake financial obligations in seeking to file lawsuits. They are inconsistent, however, with a "per case" approach that would, on a monthly basis, impose a multiple (or multiples) of twenty percent of income on prisoners with extremely limited resources.

As this Court has explained regarding the PLRA, "[c]ourts should presume that Congress was sensitive to the real-world problems faced by those who would remedy constitutional violations in the prisons and that Congress did not leave prisoners without a remedy for violations of their constitutional rights." *Brown v. Plata*, 131 S. Ct. 1910 (2011). Such a presumption is not consistent with an adoption of the "per case" approach requirement of overwhelming payments.

The "per case" approach turns the PLRA fee structure on its head with prisoners forced to choose between retaining meager income or pursuing relief for violations of constitutional rights or other wrongs. Such a reading is inconsistent with Congress's

balanced approach—preserving IFP status for prisoners and carefully imposing both an obligation for the total amount of filing fees and a limited-percentage partial monthly contribution. Only the "per prisoner" approach faithfully reflects and implements that balance.

III. THE "PER CASE" APPROACH THREATENS TO DETER MERITORIOUS LAWSUITS

Complaints filed by prisoner-litigants have promoted the amelioration of legal violations and serious abuse within prison walls. *See, e.g., Plata*, 131 S. Ct. at 1947 (upholding a meaningful reduction in prison population in overcrowded prisons found to have been in violation of the Eighth Amendment). Indeed, the United States Department of Justice recognizes that prisoner lawsuits may well demonstrate "credible allegations of civil rights[] violations."[7]

The important role that prisoner lawsuits have played, and continue to play, in remedying legal violations, either through adjudication or through change-implementing settlements, can be seen in at least three areas: (1) solitary confinement and conditions of confinement; (2) religious freedom; and (3) the Fourth Amendment.

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[7] BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, CHALLENGING THE CONDITIONS OF PRISONS AND JAILS: A REPORT ON SECTION 1983 LITIGATION 39 (1994).

Solitary confinement and conditions of confinement: This Court has long recognized that solitary confinement provokes, even for prisoners sentenced to death, "a further terror and peculiar mark of infamy." *In re Medley*, 134 U.S. 160, 170 (1890). The practice, however, is not uncommon, with estimates of 25,000 inmates in this country serving sentences in whole or in substantial part in solitary confinement. *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015) (Kennedy, J., concurring).

While the issue of solitary confinement continues to present profound legal issues, prisoner litigation has raised important challenges to this practice and resulted in substantial changes. For example, pro se inmates in New York brought a § 1983 challenge regarding allegations of unconstitutional and arbitrary conditions and punishments in connection with respective 1,095-day, 730-day, and 1,095-day periods of solitary confinement in prison Special Housing Units. Third Am. Compl. at ¶ 7, Peoples v. Fischer, No. 1:11-cv-02694-SAS (S.D.N.Y. Mar. 6, 2013), ECF No. 93.

In a settlement with the government, the prisoners were successful in bringing about reform of New York's solitary confinement procedures, including a presumption against this practice for pregnant prisoners, and alternative procedures for prisoners under the age of 18 or with significant intellectual disabilities. *See* Stipulation For A Stay With Conditions, Peoples v. Fischer, No. 1:11-cv-02694-SAS (S.D.N.Y. Feb. 19, 2014), ECF No. 124.

Examples of meritorious prisoner litigation regarding abuses in other conditions of confinement

also are readily available. *See, e.g., Hogan v. Fischer*, 738 F.3d 509, 512 (2d Cir. 2013); Stipulation and Order of Settlement, Hogan v. Fischer, 6:09-CV-06225 (W.D.N.Y. Sept. 12, 2014), ECF No. 118 (settlement resolving pro se prisoner Eighth Amendment claims of correctional officers spraying prisoner-litigant in his cell with mixture of fecal matter, vinegar, and machine oil); *Colon v. Howard*, 215 F.3d 227 (2d Cir. 2000) (confinement of pro se prisoner-litigant in Special Housing Unit for 305 days required procedural due process protections).

Religious freedom: The preservation of religious freedom also has featured prominently in meritorious prisoner litigation. In one example, the government violated the Free Exercise Clause by requiring inmates to provide physical indicia of Islamic faith to receive accommodations for Ramadan observance. *Wall v. Wade*, 741 F.3d 492, 499-500 (4th Cir. 2014). As a result of this policy, the prisoner had been "absolutely precluded from observing Ramadan because of the defendants' actions," and was eventually faced with starvation or violating his religious beliefs. *Id.* at 501-02. In considering this claim—initially brought pro se—the court held that the fact that a prisoner does not have, for example, a prayer rug is insufficient to determine whether he is a practicing Muslim. *Id.* at 500.

Without the opportunity for meritorious prisoner litigation, constitutional violations regarding religious practice and observance would persist. *See, e.g., Rich v. Sec'y, Florida Dep't of Corr.*, 716 F.3d 525 (11th Cir. 2013) (reversing summary judgment against prisoner-litigant, who initially filed pro se, regarding government failure to provide

kosher diet); *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001) (holding, in pro se prisoner litigation, that prison officials' refusal to consider prisoner's request for Native American religious items because he was not of Native American heritage violated the Equal Protection Clause).

Fourth Amendment: Egregious violations of the Fourth Amendment by prison employees also have been exposed and resolved through the efforts of prisoner-litigants. For example, plaintiff Debra Baggett represented a class of 178 female inmates videotaped by male correctional officers while subjected to strip searches. *Baggett v. Ashe*, 41 F. Supp. 3d 113 (D. Mass. 2014). Among other practices in the videotapes, prisoners were required to strip and manipulate their bodies, including lifting their breasts and spreading their legs. *Id.* at 120-21. The court found that these searches "clearly transgressed the Constitution and injured the plaintiff class." *Id.* at 127. Other examples of meritorious prisoner litigation enforcing important Fourth Amendment rights also are readily available. *See, e.g., Sanchez v. Pereira-Castillo*, 590 F.3d 31 (1st Cir. 2009) (exploratory surgery of prisoner-litigant's abdomen was an unreasonable, unconstitutional search under the Fourth Amendment where less intrusive testing could have sufficed).

These examples of meritorious prisoner lawsuits highlight the importance of preserving a reasonable, practical opportunity for judicial redress while interpreting and enforcing the PLRA. Under a "per case" approach, in which a prisoner's colorable lawsuits would expose the prisoner to substantial

multiples of his or her very limited monthly income for filing more than one lawsuit, meritorious lawsuits challenging solitary confinement and conditions of confinement, protecting religious freedom, enforcing the Fourth Amendment, and raising other fundamental claims likely would be chilled and deterred. Without this important prisoner litigation regarding these issues, the mistreatment of prisoners and the violations of constitutional law and human dignity might well proceed unchecked and unabated.

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the "per prisoner" approach best aligns with this country's tradition of adequate opportunity for judicial redress, and best reflects the intent of the PLRA and the careful balance that the statute strikes.

Respectfully submitted,

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